Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

PETER E. HALL,

Petitioner,

versus

ESPERANZA PAOLI ORJALES,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the established general rule set forth in *Faretta v. California*, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975), that guarantees to a defendant in a judicial proceeding the right to appear *pro se* is violated by the order of the trial court in the present case that required the defendant to engage legal representation, when the defendant chose voluntarily and unequivocally to represent himself and gave to the trial court timely notice of his preference to proceed *pro se*.

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COMMENTARY:

"Accused's Right, Under 28 USCS § 1654 and Similar Predecessor Statutes, to Represent Himself in Federal Criminal Proceeding," Annotation at 27 A.L.R. Fed. 485 4

JURISDICTION

The judgment sought to be reviewed was entered by the Supreme Court of Puerto Rico on October 10, 1995.

The jurisdiction of this Honorable Court to review the present case is invoked under 28 U.S.C. § 1258.

STATUTES INVOLVED

The constitutional provisions and statutes involved in this case are set forth below:

(1) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by any impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence." United States Constitution, Sixth Amendment.

(2) " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . . " United States Constitution, Fourteenth Amendment, Due Process Clause.

(3) "§ 1654. Appearance personally or by counsel

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes

therein." 28 United States Code, Section 1654, 28 U.S.C. § 1654.

STATEMENT OF FACTS

The respondent herein filed on June 14, 1994, a complaint to recover on an alleged debt resulting from a lease contract upon residential property and served the petitioner with a summons and a copy of the complaint on June 25, 1994. Appearing *pro se*, the petitioner filed on July 12, 1994, an answer to deny liability for the alleged debt. Soon thereafter, before the convening of any hearing in the present case, the trial court issued a written ruling to advise the petitioner that – in the opinion of the court without an inquiry into the particular circumstances of the present case nor a statement of the reason for the opinion of the court – it would be prudent for the petitioner to engage an attorney to represent him. While the petitioner continued to appear *pro se* to the ensuing proceedings, the trial court continued to advise the petitioner to engage legal representation, until, on September 15, 1994, the court ordered the petitioner to engage legal representation. When the petitioner refused to comply with the trial court's order, the court, on March 14, 1995, issued a written ruling (Appendix to Petition, App. 1) to impose sanctions upon the petitioner for noncompliance with the court's order by striking out the petitioner's pleadings. By motion filed on March 31, 1995, the petitioner raised before the trial court his constitutionally protected right to represent himself in these proceedings; the trial court denied on April 13, 1995, the latter motion of the petitioner.

The petitioner filed on April 11, 1995, a petition of certiorari in the Circuit Court of Appeals of Puerto Rico to seek review of the trial court's interlocutory order, alleging in the petition that the court's order violated the petitioner's constitutional right to represent himself under the established general rule of *Faretta v. California*, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975). The Circuit Court of Appeals issued on July 12, 1995, a lengthy opinion (Appendix to Petition, App. 3) to review the petitioner's argument in support of the right of self-representation in the present case and affirmed the trial court's interlocutory order. The Circuit Court of Appeals, like the trial court, failed to state any specific reason for requiring the petitioner to engage legal representation, concluding merely that the petitioner had not demonstrated an abuse of discretion on the part of the trial court.

The petitioner filed on August 14, 1995, a petition of certiorari in the Supreme Court of Puerto Rico to seek review of the judgment of the Circuit Court of Appeals. The Supreme Court of Puerto Rico denied the petition of certiorari, with a single, dissenting vote in favor of granting the writ and reversing the interlocutory order of the trial court, by judgment dated October 6, 1995, and entered October 10, 1995. Appendix to Petition, App. 9.

The present petition of certiorari seeks review in the Supreme Court of the United States of the latter judgment of the Supreme Court of Puerto Rico.

ARGUMENT

The starting point of this and any argument on the right of self-representation of a defendant in a judicial proceeding is the opinion of the Supreme Court of the United States in *Faretta v. California*, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975). It is scarcely necessary, however, to dwell on the *Faretta* opinion, because the Supreme Court of Puerto Rico, as well as the Circuit Court of Appeals of Puerto Rico in the present case, is in agreement that the *Faretta* opinion sets forth the applicable standard. The Supreme Court of Puerto Rico has held expressly in *Lizarribar v. Martinez Gelpi*, 121 D.P.R. 770 (1988), that the right of self-representation guaranteed under the Sixth and Fourteenth Amendments of the United States Constitution, and made applicable to the States through the Fourteenth Amendment, as such right is elucidated in the *Faretta* opinion, shall prevail in Puerto Rico. The Circuit Court of Appeals of Puerto Rico in the present case sought to follow the *Lizarribar* opinion and therefore tacitly to apply the established general rule of the *Faretta* opinion.

In *Faretta v. California, supra*, the Supreme Court of the United States held (1) that the Sixth Amendment, as made applicable to the States by the Due Process Clause of the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has a constitutional right of self-representation and may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so, and (2) that state courts had therefore erred in forcing a defendant, against his will, to accept a state-appointed public defender, and in denying his request to conduct his own defense. Annotation on "Accused's Right, Under

28 USCS § 1654 and Similar Predecessor Statutes, to Represent Himself in Federal Criminal Proceeding" at 27 A.L.R. Fed. 485, pp. 491-492. The federal precedents cited in the *Faretta* opinion included notably *Carter v. Illinois*, 329 U.S. 173, 91 L.Ed. 172, 67 S.Ct. 216 (1946); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 87 L.Ed. 268, 63 S.Ct. 236 (1942); and *Johnson v. Zerbst*, 304 U.S. 458, 82 L.Ed. 1461, 58 S.Ct. 1019 (1938); as well as *United States ex rel. Maldonado v. Denno*, 348 F.2d 12 (2nd Cir. 1965) and *United States v. Plattner*, 330 F.2d 271 (2nd Cir. 1964).

It should be noticed briefly that the present case involves a civil dispute, and so the protections of the Sixth Amendment are not, strictly speaking, applicable to the petitioner herein. Nevertheless, the Supreme Court of Puerto Rico has taken the position in *Lizarribar v. Martinez Gelpi, supra*, that the constitutional right of self-representation ought equally to be recognized in civil and criminal matters. 121 D.P.R. 770, 781-785. The *Lizarribar* opinion cites as support for the latter position *O'Reilly v. New York Times Company*, 692 F.2d 863 (2nd Cir. 1982), wherein the United States Court of Appeals for the Second Circuit decided to permit a litigant in a libel action to appear *pro se* under similar reasoning to the *Faretta* opinion.

The petitioner herein (defendant below) respectfully submits that, while the courts below properly recognized that the *Faretta* opinion sets forth the applicable standard, they failed properly to implement the standard under the particular circumstances of the present case. The trial court failed to state any specific reason for requiring the petitioner to engage legal representation and therefore for

denying to him the constitutional right of self-representation. Consequently, the order of the trial court violated that aspect of the right of self-representation described in *Johnson v. Zerbst, supra*: "While [the defendant] may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record." 304 U.S. 458, 465, 82 L.Ed. 1461, 1467, 58 S.Ct. 1019, 1023.

The petitioner respectfully submits that, in the event that the trial court had sought to make the determination referred to above, it would have been unable to cite any constitutionally valid reason for denying the right of self-representation. The opinion of the Circuit Court of Appeals of Puerto Rico accurately stated that "the right of self-representation . . . is not absolute and unlimited" (Appendix to Petition, App. 6) and proceeded to list those "considerations" which may result in limitations upon the right. Of these "considerations," the most significant are (1) that the claim of the right of self-representation must be voluntarily and intelligently made and (2) that the claim of the right must be timely and unequivocally asserted. 422 U.S. 806, 835, 45 L.Ed.2d 562, 581-582, 95 S.Ct. 2525, 2541. In the present case, the petitioner has complied with these conditions, since he appeared *pro se* at the time of the first responsive pleading and has thereafter sought throughout to have the courts below recognize his right to proceed *pro se*.

CONCLUSION

For the reasons set forth in the present petition for writ of certiorari, the petitioner respectfully requests of this Honorable Court the issuance f the writ of certiorari to review the final judgment of the Supreme Court of Puerto Rico in the present case entered on October 10, 1995.

Respectfully submitted,

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APPENDIX

Copies of the interlocutory order dated March 14, 1995, of the Court of First Instance, District Subsection, San Juan Part; of the final judgment dated July 12, 1995, of the Circuit Court of Appeals of Puerto Rico, San Juan Regional Circuit; and of the final judgment dated October 6, 1995, and entered October 10, 1995, of the Supreme Court of Puerto Rico sought to be reviewed in the present case are attached to this petition below:

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
DISTRICT SUBSECTION
SAN JUAN PART

Esperanza Paoli Orjales, Plaintiff, v. Peter E. Hall, Defendant.	)	CIVIL NUM. 94-6562(505) RE: ACTION TO COLLECT DEBT

ORDER

The motions of summary judgment of both parties are denied. On September 15, 1994, we granted to the defendant 30 days to make known his legal representation. As of the present date 6 months have elapsed without compliance with our order nor request of extension for compliance.

By reason of the above, the court strikes out the pleadings of the defendant. The plaintiff is ordered to submit within 15 days a sworn statement attesting to the debt as well as a draft of judgment for our consideration.

NOTIFY.

/s/ HECTOR BRULL CESTERO
DISTRICT JUDGE
March 14, 1995

[petitioner's translation.]

COMMONWEALTH OF PUERTO RICO
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT I
JUDICIAL CIRCUIT OF SAN JUAN

ESPERANZA PAOLI ORJALES, Plaintiff-Respondent, v. PETER E. HALL, Defendant-Petitioner.	KLCE9500209 Certiorari from Court of First Instance, District Subsection, San Juan Part, Civil Num. 94-6562

Panel composed of its president, Judge Fiol Matta, Judge Rodriguez de Oronoz, and Judge Gierbolini.

Opinion of the Court delivered by Judge Rodriguez de Oronoz.

JUDGMENT

San Juan, Puerto Rico, on July 12, 1995.

On November 21, 1990, Mr. Peter Hall and Mrs. Esperanza Paoli subscribed a lease contract for rental of a furnished apartment belonging to Mrs. Esperanza Paoli whereby Mr. Peter Hall promised to pay her a monthly rent of $350.00. Said contract stipulated that, upon advance written notice of thirty (30) days, either party could terminate the contract.

On February 27, 1992, Mr. Peter Hall filed a complaint against Mrs. Esperanza Paoli in the District Court,

San Juan Part, alleging that she had breached her contractual duty by not providing for his use a comfortable bed. Said complaint was assigned the number Civil 92-2719.

The defendant answered the complaint, prayed for dismissal of the action, and counterclaimed for payment of the rental installments due from January to April, 1992. Furthermore, she sought the eviction of Mr. Peter Hall on the ground of the expiration of the lease contract. At the time of the answer, Mrs. Esperanza Paoli had already given notice of termination of the contract.

On November 30, 1992, the court dismissed the complaint and granted the counterclaim. The court determined that Mr. Peter Hall was indebted for $1,400. of past due rent and that the eviction was proper for the reason that the tenant was occupying the property after expiration of the contract, since surrender had been lawfully requested.

Mr. Peter Hall appealed the judgment and continued to occupy the apartment until February 7, 1994, on which date he vacated the property.

On June 14, 1994, Mrs. Esperanza Paoli filed a complaint in the District Court, San Juan Part, claiming payment from Mr. Peter Hall of the rental installments of May, 1992, to February 7, 1994. Said action was assigned the number Civil 94-6562.

Mr. Peter Hall answered the complaint and raised the defense of *res judicata*, alleging the occurrence between cases Civil Num. 92-2719 and Civil Num. 94-6562 of the exact similarity of subject matters, causes of action, and parties. Subsequently, he raised the same defense in a

motion of summary judgment. The plaintiff, in turn, also sought summary judgment for the amounts claimed in the complaint.

By order issued March 14, 1995, the trial court denied both motions of summary judgment and imposed sanctions upon Mr. Peter Hall by striking out the pleadings of the latter, for the reason that he had not complied with the order of the court requiring him to make known his legal representation.

Not in agreement with the judgment of the court, Mr. Peter Hall submits the present petition, alleging, essentially, that the trial court committed error in denying his motion of summary judgment, in not permitting him to appear *pro se* and requiring him to engage legal representation, and in imposing unjustifiably sanctions by striking out his pleadings.

. . . .

-II-

We turn now our analysis to the allegation of Mr. Peter Hall that he is protected by the right of self-representation in these judicial proceedings.

On repeated occasions, the trial judge advised Mr. Peter Hall of the prudence of engaging legal representation. Finally, on September 15, 1994, the judge issued an order in which he granted to Mr. Peter Hall thirty (30) days to make known his legal representation. There elapsed six (6) months without the compliance of Mr. Peter Hall with said order nor the request of an extension for compliance. For the reason of the described lack of

compliance, the judge imposed sanctions on Mr. Peter Hall and struck out his pleadings.

Notwithstanding, the right of any person to proceed *pro se* results from Section 7 of Law Num. 17 of June 10, 1952, as amended (4 L.P.R.A. sec. 740), which provides as set forth below:

> No person who is not a lawyer authorized by the Supreme Court of Puerto Rico may engage in the practice of the profession of lawyer, nor represent himself as such, nor as judicial agent, neither undertake, *with the exception of his own affairs,* any judicial or quasi-judicial matter before any court of law . . . " (emphasis added.)

From the above cited provision, it may be inferred that any person who is not a lawyer authorized by the Supreme Court of Puerto Rico may undertake his own matters in any court of law of the jurisdiction.

The right of self-representation, in civil matters as well as criminal, is not absolute and unlimited. There exist certain considerations that may cause a judge properly to deny to the parties or to an accused the opportunity to appear *pro se* in judicial proceedings. Among the various considerations are the following: whether the party's decision to represent himself was taken voluntarily; whether there occurred an express request to the court; whether the request was timely submitted, since the more advanced the proceeding, the greater the discretion to deny it; the delay or disruption of the proceedings that self-representation would cause and its effect on the effective administration of justice; the competency of the

representation that the party would be capable of providing; the complexity of the controversy to be adjudicated. Each of these considerations must be reasonably balanced by the court, keeping in mind the particular circumstances of the case, the interests of the parties, and the efficient administration of justice. *Lizarribar v. Martinez Gelpi*, 121 D.P.R. 770 (1988).

Of great relevance to the circumstances of the case before us, since Mr. Peter Hall is a lawyer, the Supreme Court has expressed that the fact that a litigant who claims the right of self-representation is a lawyer does not result, in all cases, in a clear course to the recognition of this privilege by the courts. "The fact of being a lawyer cannot alone constitute sufficient criterion to authorize a party's self-representation. Other factors . . . may counsel that the best course of action to follow is to require the appearance of another lawyer in the case." *Lizarribar v. Martinez Gelpi, supra*, at pages 782, 783.

In the case before our attention, the petitioner has not demonstrated to us that the judge acted incorrectly or abused his discretion at denying the opportunity of appearing *pro se*. Nor has he demonstrated that, before the noncompliance with the court order, the sanctions permitted by Rule 37.3 of the Rules of Civil Procedure (32 L.P.R.A., App. III, R. 37) were improper. Concerning the application of sanctions in such cases, see *Lizarribar v. Martinez Gelpi, supra*, at page 787.

In light of the above set forth, the writ is issued and the order sought to be reviewed is affirmed. The case is remanded to the trial court for further proceedings.

The motion requesting oral argument is denied. Furthermore, the motion is denied requesting consolidation of the present petition of certiorari with the appeal in number KLAN9500535.

So decided and orders the Court and certifies the Clerk of the Court.

/s/ Maria de la C. Gonzalez
Clerk of the Court

[petitioner's translation; opinion edited to include only parts relevant to present petition.]

IN THE SUPREME COURT OF PUERTO RICO

Esperanza Paoli Orjales, Plaintiff-Respondent, vs. Peter E. Hall, Defendant-Petitioner.	)	Num. CC-95-59 Certiorari

ORDER

In San Juan, Puerto Rico, on October 6, 1995.

To the petition of certiorari submitted by the defendant-petitioner, denied for *gross* disregard of the Regulations of the Court.

So decided the Court and certifies Mr. Clerk of the Court. Mr. Associate Justice Rebollo Lopez would grant issuance of the writ as he considers that the petitioner has the right to proceed *pro se*.

/s/ Francisco R. Agrait Llado
Clerk of the Court

[petitioner's translation.]